FIFTH EDITION Revised and Enlarged.

HANDBOOK

ON THE

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WITH

Approved Schemes of Compensation;
Statutes referred to:
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Employers' and Workmen's Liability;
ctions independent of the Act; Arbitration;
Forms of Notices; List of Stamp Duties;
cial Form of Application for a Contracting-out
Certificat, &c.;

TOGETHER WITH THE PRINCIPAL

EXPLANATORY REMARKS

OF

THE LORD CHANCELLOR, LORD HERSCHELL.
THE HOME SECRETARY, THE COLONIAL SECRETARY,
THE ATTORNEY GENERAL, MR. ASQUITH,
AND OTHER STATESMEN.

BY

M. ROBERTS-JONES, Esq.,

Barrister-at-Law, of Gray's Inn and the South Wales Circuit, Coroner for South Monmouthshire, and Member of the Board of Management of the Monmouthshire and South Wales Miners' Provident Society.

PRICE TWO SHILLINGS AND SIXPENCE.

1898.
CARDIFF: WESTERN MAIL, LIMITED.
LONDON: 62, FLEET STREET.

Opinions of the Press.

Law Notes.—"An excellent little treatise on the Act, and to the author we hasten to render thanks for the assistance it has been to us personally in understanding the Act. . . . . Mr. Roberts-Jones is well qualified to treat the subject The result of his experience is shown on every page by the practical suggestions he makes. . . . . In short, the whole subject is dealt with exhaustively, and by a 'master' who not only knows but loves his subject—by one who is deeply interested in the welfare of those who in his dedication are rightly described as the wounded soldiers of our industrial army. To employers, secretaries of insurance companies and friendly societies, and to solicitors the little treatise will prove invaluable, and we can heartily recommend them to trust to Mr. Roberts-Jones's handbook for guidance in working in this new and most important statute."

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Bristol Times and Mirror.—"Compendious, helpful."

This Handbook has been favourably reviewed by upwards of 200 of the leading papers in the Kingdom.

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DEDICATED

(BY HIS KIND PERMISSION)

TO THE

RIGHT HON. JOSEPH CHAMBERLAIN, M.P.,

HER MAJESTY'S SECRETARY OF STATE
FOR THE COLONIES,
THAN WHOM NO STATESMAN OF MODERN TIMES HAS
DONE MORE TO RELIEVE THE ANXIETIES
OF OUR "WOUNDED SOLDIERS OF INDUSTRY"
AND THEIR DEPENDENT RELATIVES.

PREFACE TO THE FIFTH EDITION.

The very gratifying demand for this little work is principally due to the fact that it deals so largely with the question of settling disputes under the Act by means of amicable schemes of compensation, instead of by litigation, or even by arbitration. The leading lawyers of the Kingdom have publicly expressed in Parliament and elsewhere, their desire to give to wounded workmen and their dependent relatives the fullest opportunity of securing compensation under this Act without the costly aid of litigation. Workmen may feel assured that before the Registrar of Friendly Societies will sanction any scheme it must be fair and reasonable, and at least equivalent to the Act in its benefits to them.

As a result of upwards of 200 Press reviews, many of which were of an exceedingly able and instructive character, the author is convinced that the general feeling of the community is in favour of friendly schemes of compensation, which may provide any or all of the following benefits:—

(1) *Prompt payment of relief.* Under the Act, the employer may delay arbitration for at least three months. How is the unfortunate workman (or his widow) to live during that time and the subsequent period of arbitration or litigation?

(2) *Payment from the date of Accident.* The Act makes no provision for the first fortnight.

(3) *Payment regardless of misconduct.* Hitherto, the question of misconduct has not not been taken into consideration by several of the leading Provident Societies. In 28 per cent. of the inquests held by the author, during the past five years, at various

collieries and factories, it was alleged that death was due to the misconduct or negligence of the deceased. In 1892, Mr. Chamberlain estimated that only 42 per cent. of the accidents were non-preventible.

(4) *Absence of friction between employer and workman*, and the probable re-instatement of the latter on restoration of health. The author has experienced much difficulty at several inquests in getting officials or workmen to give evidence against their employers.

(5) *A check on malingering.* Workmen who contributed to a mutual scheme would have an interest in preventing malingering and other abuses.

(6) *Extra allowance for widows with large families.* Under the Act, a widow with six or seven children will get no greater compensation than a childless widow.

(7) *Old age pensions.*

(8) *Security against bankruptcy.* A scheme approved by the Registrar, and generally contributed to by employers and workmen, would hardly be affected by the bankruptcy of an individual employer.

(9) *Exemption from stamp duties*, if the scheme be registered under the Friendly Societies' Act, 1896.

There appears to be no reason why an existing Society cannot become a scheme under the Act, provided the employers' contributions thereto, and the benefits therefrom, are sufficient to satisfy the Registrar.

Mr. John Burns, M.P., and other workmen's representatives thought it undesirable that questions of compensation should be dealt with by the same tribunal of masters and men who discussed wages. A Special Committee would be preferable.

It is a flaw in the Act, and an incentive to litigation, that the costs of an unsuccessful action for damages for non-fatal injuries cannot be deducted from the amount of compensation subsequently awarded by an arbitrator in another court. (See Sec. I., S.S. 4, and Sched. I., 14.)

Some well-known lawyers have recently expressed their opinions that, under this Act, an injured workman may claim compensation from the date of accident, if his disablement exceeds two weeks. This is certainly contrary to the intention of our legislators (see p. 49), and equally contrary to the meaning of the First Schedule (1), (b).

A copy of the official form of application for the Registrar's Certificate will be found on page 76.

In conclusion, the author desires to thank the numerous legal practitioners, employers of labour, and representatives of workmen, who showed such practical appreciation of this hand-book that the fourth edition, consisting of 5,000 copies, was disposed of within a month of its issue.

M. Roberts-Jones.

49, Claude Road, Cardiff,
February, 1898.

PREFACE TO THE FIRST EDITION.

This treatise is simply the result of the author's interest in the subject after several years' practical experience in the working of various Friendly Societies, Workmen's Relief Funds, and the Employers' Liability Act, 1880, and is intended principally for the use of arbitrators and committees of arbitration under friendly schemes of compensation between employers and workmen. For this purpose the author has received the kind permission of the Home Secretary, the Colonial Secretary, the Attorney-General, and other eminent statesmen to make use of any explanatory remarks made by them during the progress of the Bill. Some years will probably elapse, however, and several decisions of the Court of Appeal be given before the Act will be clearly understood either by lawyers or the laity.

"There was nothing more interesting," said the Prime Minister, "to those who had often watched the Committees in the House than to compare the prophecies which were made as to the meaning of a particular clause with the actuality which was afterwards revealed in the decision of the Judges."—*Times*, July 30th, 1897.

M. Roberts-Jones.

49, Claude Road,
Cardiff.

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INTRODUCTION.

This Act applies to nearly one half of the total number of workmen employed in the United Kingdom, and, as far as proceedings under the Act are concerned, does away with the doctrine of common employment," the defence of "contributory negligence,' the application of the maxim, "*volenti non fit injuria*," and "nine-tenths of those technicalities which have disappointed the just hopes of the injured workman or of those who, by his death, have been left suddenly to helplessness and poverty."* Should an injured workman, however, be bold enough to pursue his ordinary legal remedies independently of this Act, he is still liable "to be enmeshed and entrapped in that elaborate series of pitfalls which are provided by the Employers' Liability Act of 1880."* Prior to the Workmen's Compensation Act, 1897, something like 12 per cent. only of the accidents which happened in those trades to which the Act applies were in any way dealt with in the shape of compensation, but this Act brings sure if not substantial relief in each case of the remaining 88 per cent., except where the disablement does not exceed a fortnight in duration, or the injured workman has been guilty of serious and wilful misconduct. According to the estimate of the Home Secretary, the Act will apply to about 3,600,000 workmen in factories, docks, and wharves; to 730,000 in mines; to 465,000 on railways; and to 104,000 in quarries. Also to something like 700,000 builders and brieklayers, and 800,000 navvies and general labourers. Altogether some 6,000,000 at least will be included in the Act. Outside the Act there are those employed in agrieulture, estimated at 1,700,000; seamen and fishermen, about 192,000; domestic servants, 2,300,000; workshop operatives, 2,000,000; shop assistants, 500,000; transport services, 600,000—which gives a total of something over 7,000,000. The most dangerous trades being already included in the Act, it is probable that its provisions will soon be extended to other industries.

* The Right Hon. H. H. Asquith, M.P.

WORKMEN'S COMPENSATION ACT, 1897.

60 & 61, Vict., Chap. 37.

An Act to Amend the Law with respect to Compensation to Workmen for Accidental Injuries suffered in the course of their Employment.

6th August, 1897. (*a*)

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1.—(1.) If in any employment to which this Act applies (*b*) personal injury by accident (*c*) arising out of *and* in the course of the employment (*d*) is caused to a workman (*e*), his employer (*f*) shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act. (*g*)

(*a*) The original Bill fixed the 1st January, 1898, as the date of commencement of the Act, but in order chiefly to give further time for employers and workmen to frame schemes of compensation which would meet with the approval of the Registrar of Friendly Societies, the date of commencement was changed first to March 31st, and finally to July 1st, 1898.

(*b*) See section 7.

(*c*) See "Personal injuries by accident," page 35.

(*d*) A liberal construction is given to these words both on the Continent and by the Miners' Relief Societies of this country, compensation being generally granted in cases of injuries received whilst going to or returning from work.

(*e*) "Workman" includes clerks, officials, assistants, apprentices, &c. See section 7, sub-section 2.

(*f*) "Employer" has a wider meaning in this Act than in the Employers' Liability Act, 1880, and includes the legal personal representative of a deceased employer. See section 7, sub-section 2.

(*g*) See page 24.

(2.) Provided that :—

(*a*.) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed ; (*h*) (NOTE.—See First Sched. (1) (*b*.).)

(*b*.) When the injury was caused by the personal negligence or wilful act of the employer (*i*), or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act ; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, *except in case of such personal negligence or wilful act as aforesaid* (*j*) ;

(*c*.) If it is proved that the injury to a workman is attributable to the *serious and wilful misconduct* of that workman, (*k*) any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule of this Act, be settled by arbitration, in

(*h*) It is estimated that this clause will exclude about 25 per cent. of the whole of the accidents that take place, and by taking away two weeks' compensation from all the rest, will reduce the amount of compensation by something like 30 per cent.

(*i*) See "Actions independent of this Act," page 42.

(*j*) See "Actions independent of this Act," page 42.

(*k*) See "Serious and Wilful Misconduct," page 39.

accordance with the Second Schedule to this Act.

(4.) If, *within the time hereinafter in this Act* limited for taking proceedings, an action is brought to recover damages (*l*) independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, *if the plaintiff shall so choose*, proceed to assess such compensation, and shall be *at liberty* to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. (See p. 45 and Sched. 1., 14.)

In any proceeding under this subsection, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act. (*m*).

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act (*n*).

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof (*o*) and before the workman has

(*l*) See "Actions independent of this Act," p. 42, *et seq.*

(*m*) See *second schedule*, par. 8.

(*n*) See the Coal Mines Rules Regulation Act, 1887 (section 70), and the Factory and Workshop Acts, 1878 (section 82) and 1895 (section 13), *post*, page 66.

(*o*) In an action under the Act of 1880, notice of injury must be given within six weeks, and the action commenced within six months from the date of accident, or, in case of death, within twelve months from the time of death. Every action under Lord Campbell's Act must be commenced within twelve months after the death of the injured person.

voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death (*p*). Provided always that the want of or any defect or inaccuracy in such *notice* shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause (*q*).

(NOTE.—If the arbitrator finds, as a fact, that such want, defect, or inaccuracy was occasioned by mistake, or other reasonable cause, *or* that such want, &c., did not prejudice the employer in his defence, he is bound to overlook it. The question of prejudice does not arise where the defect complained of is occasioned by mistake or other reasonable cause—"Reasonable cause would include genuine ignorance."—Att.-General, Parly. Debates, 27th May, 1897).

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers. (*r*)

(3.) The notice *may* be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. (*s*).

(*p*) In cases under the Employers' Liability Act, 1880, if the employer has not received notice of injury within the statutory period, he cannot plead the want of notice in defence, unless he has given notice of such special defence in accordance with the County Court rules (Conroy *v.* Peacock, 2 Q.B. 6 (1897)).

(*q*) Absence of notice or any defect therein may be overlooked by the Arbitrator but no *claim* can be allowed by him which is not made within the six months specified. See also note (*a*) page 30.

(*r*) The notice must be in writing (*Moyle v. Jenkins*, 8 Q. B. Div. 116). See Form 1, page 70.

(*s*) Delivery to a child would not be a good delivery (*Adams v. Nightingale*, 72 L.T. Newspaper, 424).

(4.) The notice *may* also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered. (*t*)

(5.) Where the employer is a body of persons corporate or unincorporate, the notice *may* also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body. (*t*[1].)

(NOTE.—The provisions as to notices are similar to those contained in Sec. 7 of the Employers' Liability Act, 1880).

3.—(1.) If the Registrar of Friendly Societies after taking steps to ascertain the views of the employer and workmen certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any (*u*) of

(*t*) The P.O. receipt would prove that the notice was properly addressed and registered. As to an unregistered letter, wrongly dated, and otherwise defective, see *Previdi v Gatti*, 58 L.T. 762., 36 W.R. 670. See also *Franks v. Silver*, 73 L.T. 69; and *Carter v. Drysdale*, 12 Q.B. Div. 91.

(*t*[1]) In almost every case of injury coming within the provisions of this Act, written notice thereof must be given by the employers to the Board of Trade or Government Inspectors as soon as possible after the accident. (See Notice of Accidents Act, 1894; the Railways Act, 1871; Mines Act, 1887; Factory Act, 1878; and the Explosives Act, 1875). Consequently it will be difficult for an employer to prove that he was prejudiced in his defence under this Act by the absence of due notice from an injured workman.

(*u*) The fact that the general body of workmen accepted and adopted a scheme would not affect the right of an individual workman to rely upon the Act instead of the scheme. See *Schemes*, p. 48.

those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act. (u^1)

(2.) The Registrar may give a certificate to expire at the end of a limited period not less than five years. (v)

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen (v^1) of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate. (w)

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the

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(u^1) See "Schemes of Compensation," *post*, pp. 48, *et seq.* See also Section 9 *post*.

(v) There is no appeal from the refusal of the Registrar to grant a certificate under this Act.

(v^1) This subsection gives the workmen only, and not the employers, the right to demand that the Registrar shall examine into a complaint.

(w) The Chief Registrar at present is E. W. Brabrook, Esquire, F.S.A., 28, Abingdon Street, S.W., London.

scheme as may be made or required by the Registrar of Friendly Societies. (*x*)

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

4. Where, in an employment to which this Act applies the undertakers (*y*) as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workmen employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively (*z*).

(*x*) No penalty is mentioned for neglect of this duty, but the Registrar may, of course revoke his certificate on any one of the grounds mentioned in sub-section 4.

"To violate an Act of Parliament," said Lord Campbell, "although there is no specific penalty attached to the violation, is a misdemeanor, and a person that does so is liable to be indicted and punished." (*Longworth's case*, 1 De Gex F. & J. 31).

(*y*) See "Undertakers" section 7, sub-section 2.

See also next note (*z*). As to the liability of a public authority for a contractor's negligence, see *Hardaker v. Idle District Council*, Court of Appeal, 1896, 1 Q.B. 335. (*post*, p. 47).

As to the "butty" system in mines, see *Brown* v. *Butterley Coal Co.*, 53 L.T. 964. (*post*, p. 46).

(*z*) "It was clear," said the Attorney-General, "that the clause ought not to apply where the work done by the sub-contractor was

5. (1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due (*a*) and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2). In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages (*b*), or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person (*c*).

(NOTE.—The "other person" may be a fellow-workman.)

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not part of the undertaker's business. For instance, the painting of a railway station rooms was purely ancillary to the business of a railway company." (*The Times*, July 31st, 1897.)

(*a*) That is, a first charge only upon the sum due from the insurers.

(*b*) If a workman brings an action against a third party the latter may plead contributory negligence. The employer cannot plead this under the Act.

(*c*) Speaking on this clause, Mr. Chamberlain said. "If a man in the employ of a railway company met with an accident, due to a defect in machinery, owing to the negligence of the person supplying the machine, the clause gave the workman the option of going against the person who supplied the machine instead of the railway

7. —(1.) This Act shall apply only to employment by the undertakers as herein-after defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as herein-after defined on in or about any building which *exceeds* thirty feet in height, *and* is either being constructed or repaired by means of a scaffolding, or being demolished, *or* on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(NOTE.—The Act contains no definition of "height" or "building." The definitions given in the London Building Act, 1894 (S. 5, 21), and in the Public Health Acts, do not, of course, apply to buildings under this Act. "Scaffolding" does not appear to be necessary in cases of demolition to bring such cases within the Act. For a collection of decisions on the meaning of "Building," see *Willis* on this Act, 2nd Edition, p. 41).

(2.) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the

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company." The Attorney-General supplemented these remarks with the following:—"Take the case of an engine which had been so badly put together that while working in a mill the fly-wheel went to pieces and injured 20 persons. Compensation would be payable by the employer, that is, the millowner; but as the accident was really occasioned by the engine maker the object of the clause was to give the employer a remedy against him. There was another case—the case of an employer who sent his carter to the railway station to unload goods from trucks, and a crane which was badly managed led to an accident in which the leg of a railway porter and the leg of the man who was sent with the cart were broken. There would be no remedy by the carter against his employer for that accident, but he would have a remedy against the railway company for negligence, and, of course, the porter would have a remedy against the railway company as he was in their employment" (*The Times*, July 6th, 1897). A collier *maliciously* struck by another's pick-axe cannot recover under this Act. (Att-General, Parly. Debates, 24th May, 1897).

Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896 (See *post.* p. 61).

"Factory" has the same meaning as in the Factory and Workshops Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895 (*e*), and every laundry worked by steam, water, or other mechanical power:

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies: (*f*)

"Quarry" means a quarry under the Quarries Act, 1894: (*g*)

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes *any other work* for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used: (*h*) (NOTE.—"*Any other work*" means, according to the doctrine of *ejusdem generis*, other work of a similar nature, such as excavating, road-repairing, drain-laying, &c).

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshops Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines

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(*e*) See the Interpretation Clauses of these Acts, *post*, p. 61.

(*f*) See the Interpretation Clauses of these Acts, *post*, p. 66.

(*g*) See Sect. 1 of the Quarries' Act, 1894, *post*, p. 66.

(*h*) Canals and sewers during construction are "engineering works," but when complete and handed over to the owners, the operation of this Act ceases. "Sewer" does not include "drain" under the Public Health Act, 1875.

Regulation Act, 1872, as the case may be (*i*), and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer: (*j*)

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable: (*k*)

"Dependents" means—

(*a*) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846 (See p. 68), as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

(*b*) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part

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(*i*) See the Interpretation Clauses of these Acts in Appendix A.

(*j*) This definition is wider than that given in the Act of 1880, under which no action will lie against an employer's executors. *Actio personalis moritur cum persona: (Gillett v. Fairbank*, 3 T.L.R., 618).

(*k*) This is a much wider definition than that given in the Employers' and Workmen's Act, 1875, and the Employers' Liability Act, 1880, and includes officials, clerks, assistants, &c.

See sections 2 and 5 of the Fatal Accidents' Act, 1846, and notes thereon, in Appendix A, *post*, p. 68.

dependent upon the earnings of the workman at the time of his death. (These may be his widow, parent, and child). (*l*)

(3.) A workman employed in a factory which is a ship-building yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard. (*m*) (NOTE.—"Tidal water" means "any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour."—*Merchant Shipping Act*, 1894, S. 742.)

8.—(1.) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, (*n*) and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

(*l*) By the law of Scotland marriage may be established by habit and repute where the parties cohabit, and are at the same time held and reputed as man and wife. Certain persons, moreover, have indefeasible claims in their own right, not derived through husband or father. It is the practice also to allow a solatium for wounded feelings (*Paterson v. Wallace*, 1 Macq., 748). Collateral relatives cannot recover damages (*Greenhorn v. Addie*, 27 Sc. Jur. 450), nor can the mother of a bastard (*Clarke v. Carfin Coal Co.* (1891) A. C. 412). Marriage in Scotland legitimises children born out of wedlock.

(*m*) One of the cases to be met by this Clause is "that of rivetting begun on the ways and being continued in the adjacent water."—The Attorney General, see *Times*, July 31st, 1897.

"The sub-section did not mean that the ships should be near the yard, but in the tidal waters, docks, or rivers, contiguous to the yard." The Home Secretary, Parly. Debates, July 30th, 1897.

(*n*) See Section 1 of the Superannuation Act, 1887, *post*, p. 65.

9. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of *this Act*, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act. (*o*) (See Section 3).

10. (1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

(*o*) It is important to note that there appears to be nothing in this Act which prohibits a workman from contracting out of the Employers' Liability Act, 1880, or abandoning his Common Law rights, or which puts an end to any existing agreement by which a workman has contracted out of the Act of 1880. No existing contract, however, would deprive him of his rights to compensation under this Act after the expiration of the time mentioned in the section.

It was held by the late Lord Advocate that it was not legal according to Scotch law to contract out of the Act of 1880, except as to non-fatal accidents. The Fatal Accidents Act, 1846, does not apply to Scotland.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

Scale.

(1.) The amount of compensation under this Act shall be—

(*a*) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer (*o*);

(*o*) Mr. Asquith, Mr. John Burns, and several other M.P.'s thought that periodical payments were preferable to a lump sum. Sir W. Houldsworth suggested that in the case of death a moderate sum—£10 or £15—be first paid to meet the funeral expenses, then generous weekly payments for the first 12 months in order to allow the family time to turn round and consider how they were going to live in the future, then at the end of 12 months a lump sum. (*The Times*, June 3, 1897).

Mr. Chamberlain estimated the average earnings of a workman during three years to be about £180. The word "earnings" includes things capable of being turned into money by accurate estimation, such as rent, food, and clothes; but not a thing so vague as tuition which an apprentice receives from his master. *Noel v. Redruth Foundry Co.*, 1896, 1 Q.B. 453.

(ii.) if the workman does not leave any such dependants, but leaves any dependants *in part* dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and *proportionate to the injury* to the said dependants; and (*p*)

(iii.) if he leaves no dependant, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week (*q*) not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound. (*r*)

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may

(*p*) Where a workman leaves any dependants wholly dependent upon his earnings, the maximum amount of compensation is £300, the minimum £150. Where the dependants are only in part dependent, the maximum is the same, but there is no minimum. Therefore a relative in receipt of a shilling or two weekly from other sources will not be strictly entitled to claim the minimum of £150. The words "proportioned to the injury" have received judicial interpretation under Lord Campbell's Act. Funeral expenses cannot be taken into account, as they must be incurred sooner or later (*Dalton v. S. E. Ry. Co.*, 4 C.B.N.S. 296). See also *Pym v. G.N. Ry. Co.*, 2 F. & F. 619, and *Gilliard v. L. & Y. Ry. Co.*, 12 L.T. 556.

(*q*) An injured workman will get no compensation in any case under this Act for the first two weeks. See pp. 12 and 50.

(*r*) At present the average relief paid by the various Provident Societies does not exceed eight shillings a week. See page 59.

receive from the employer in respect of his injury during the period of his incapacity. (*s*)

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall in case of death, be made to the legal personal representative of the workman (*t*), or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act. (*u*) (NOTE.—Dependent brothers, sisters, nephews and nieces have no claims whatsoever as relatives under this Act. (See p. 68). The employer does not seem to be protected from liability to pay again, when the amount is settled by agreement, if he pays to a wrong person).

(*s*) "In Northumberland and Durham, employers paid compensation to every workman injured underground. From the date of the injury he received 5s. per week, called 'smart money.' This should be taken into account, and deducted from the amount of compensation for which an employer was liable under the Bill."—The Earl of Durham, see *Times*, July 27th, 1897.

(*t*) By "personal representative" is meant his executor, or in the absence of a will, his administrator. The claims to a grant of letters of administration are admissible in the following order:—(1) Widow or husband, (2) child, (3) grandchild, (4) father, (5) mother, (6) brothers or sisters, or grandfather or grandmother, uncles or aunts, nephews or nieces, (8) cousin-german.

(*u*) Where the gross value of the personal estate of the deceased does not exceed £300, the person intending to apply for probate or letters of administration may deliver to the proper officer a notice of the particulars of the estate, and deposit 15s. for fees and expenses, and if the estate exceed £100, the further sum of 30s. for stamp duty (44 and 45 Vict., c. 12, s. 33). By "proper officer" is meant the registrar of the Court of Probate, and, in some cases, the County Court Registrar and the local Inland Revenue Officer.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration, under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Post-master-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums (*c*.)

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank, under this Act, shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any

(*c*) A table of life annuities may be obtained at any post office. A lump sum of £150 would procure a widow aged 40 an immediate annuity for life of 2s. 10d. per week. Unfortunately, Savings' Bank annuities are paid only in half-yearly sums.

person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place. (*w*).

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the *employer*, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to

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(*w*) Once a claimant has accepted a sum of money in full satisfaction, he has no further remedy unless the acceptance has been obtained by the fraudulent misrepresentation of the employer or his agent, in which case the agreement may be set aside, although under seal. (*Hirschfield v. London, Brighton, and South Coast Railway Co.*, 2 Q.B. Div. 1). Evidence on the face of a receipt that full satisfaction has been paid may be rebutted by other evidence. (*Lee v Lancashire and Yorkshire Railway Co.*, L. Rep. 6, Ch. 527). The representatives of a deceased man are bound by an acceptance in full satisfaction, in the same way as an injured man himself. (*Read v. Great Eastern Ry. Co.*; L. Rep. 3 Q.B. 555).

be invested or otherwise applied as above mentioned (*x*).

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same (*y*). NOTE.—This paragraph evidently does not apply to sums awarded as compensation in cases of death.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme (*z*).

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

(*x*) Only the employer is entitled to claim redemption by the payment of a lump sum. In practice, however, the initiative is generally taken by the injured workman or his dependent relatives. It is doubtful whether a third party who has indemnified the employer can claim redemption of the weekly payments.

(*y*) An important part of this paragraph was inserted as the result of the following remarks of Lord Herschell, in the House of Lords:—"I can find nothing in the Bill which excludes the ordinary common-law liability of the servant for any act of negligence. He is liable like anyone else, and his employer can sue him if through his negligence he suffers any damage. . . . At present I do not see what answer there would be to such an action, or what would stand in the way of the employer in getting judgment. If he got judgment, was there anything to prevent his getting the fruits of that judgment out of the sum which was supposed to compensate the workman by reason of the injury he had received?" (See *Times*, 27th July, 1897.)

(*z*) See these sections set out in Appendix A, *post*.

Under Sections 70 and 71 of the Friendly Societies Act, 1896, a Registered Society may convert itself into a Company, or transfer its engagements to another Registered Society.

SECOND SCHEDULE.

Arbitration.

The following provision shall apply for settling any matter which under this Act is to be settled by arbitration :—

(1.) If any committee, representative of an employer and his workmen exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

Note.—In taking evidence the arbitrator may proceed as he chooses, provided neither party objects before the award, but in order to obviate objection he should proceed according to the ordinary rules of law.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months (*a*) from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purpose of this Act, have all the powers of

(*a*) The 13th November was held to be within three months of the 13th August. *Foster, exparte, Hanson, In re*, 56 L.T. 573.

By "months" is meant calendar months. Three months from 31st March will expire on June 30th. Six months from August 28th, 29th, 30th, or 31st will expire on February 28th in any year which is not a Leap year. (*Migotti v. Colville*, 40 L.T. 747.)

Failing settlement within three months the matter goes to arbitration. How will the dependants live during that time and the subsequent period of arbitration?

a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury. (*c*)

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal (*d*) and the county court judge, or the arbitrator appointed *by him*, shall, for the purpose of an arbitration under this Act, have the same power for procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court. (*e*)

NOTE—Where mixed questions of law and fact are referred, the arbitrator may award according to what he believes just, irrespective of particular points of law, which may be submitted for the decision of the County Court judge.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(*c*) Treasury regulations will be issued in due course. It will be observed that par. 3 does not apply to arbitrators appointed by the parties.

(*d*) The right of appeal is excluded in all cases in which the parties agree, in writing, before judgment, not to appeal. (C.C. Act, 1888, section 123).

(*e*) This paragraph (4) does not apply to Scotland. (See par. 15, *post*). The power to procure the attendance of witnesses, &c., is given by this par. to the judge and to the arbitrator appointed by him, but not to other arbitrators.

Section 16 of Act 14 and 15 Vict., c. 99, enacts that "every arbitrator . . . hereafter having . . . by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called." See App. B., form 8.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator (*f*).

NOTE.—The application may be made to a Master in Chambers. (See Order LIV., rule 12, Rules of the Supreme Court. Also *Smeeton v. Collier*, 1 Ex. 457).

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register (*g*).

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the county court of

(*f*) This paragraph (7) does not apply to Scotland. See par. 15.

(*g*) Agreements, receipts, bonds, drafts, &c., are subject to the usual stamp duties, no exemption having been made, as under section 33 of the Friendly Societies' Act, 1896. An award is chargeable with *ad valorem* duty on the amount awarded, according to the scale under the head "Award" in the First Schedule to the Stamp Act, 1891. (See *Stamp Duties*, p. 74.)

the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, (*h*) and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(*h*) The usual grounds for setting aside an award are:—
(1) That the arbitrator has been guiity of misconduct;
(2) That the award has been improperly procured;
(3) That the arbitrator has not pursued the submission;
(4) That the award is indefinite and inconclusive.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this schedule to Scotland—

(*a*.) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court:"

(*b*.) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral:

(*c*.) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them, and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

PERSONAL INJURIES BY ACCIDENT.

Section 1 of this Act provides that if in any employment to which the Act applies, "personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule."

A recent judicial decision having raised a difficult question as to the definition of an accident, and cases turning upon it having arisen in connection with the Lancashire and Cheshire and North Wales Miners' Relief Societies, their Boards of Management consulted the late Attorney General Sir R. T. Reid, Q.C., M.P., and his opinion will be read with much interest. It is as follows:—

> "The term 'accident' means an occurrence out of the ordinary which produces death or disablement from work. There must be some casualty or special occurrence. Death or disablement not produced by a particular occurrence to which you can point is not a case of 'accident' within the Rules. And even if you can point to a particular occurrence as a cause there is no accident if it is something which is in the ordinary course in the work the man undertakes.
>
> "In most cases an 'accident' is accompanied by something in the nature of violence, *e.g.*, a fall or blow, or explosion. But it is not essential that there should be any element of violence. The shock caused to a signalman by having on an emergency to prevent imminent danger of injury to a train approaching his signal box was treated as an accident in Pugh's Case (L.R. 1896, Q.B., 248). Again, if a man had to work in an exceptionally bad atmosphere due to breakdown of machinery, fainted, or in an exceptional wet, due to a similar cause, and caught rheumatic fever or was kept an excessive time in a pit from a fall from the roof or from breakdown of machinery and fell ill, all these might legitimately be treated as cases of accidents within these rules. For in such cases there would be an occurrence out of the common which caused the sickness. But if the air was the ordinary, or the wet was the ordinary, or the time he had to be in the pit was the ordinary, and yet by reason of that particular man being unable to support it he fell ill, it would not be an accident, because nothing would have occurred out of the ordinary, and so it would not be an accident if his hands were blistered or

his knees injured or he suffered from blinking merely from doing his work in the ordinary condition. This is as near to a description and definition of accident as I can come, and I supplement it by a further observation. However nicely one may adjust a definition of 'accident' there will always be cases on the border land.

"The case submitted can only be treated as an accident if the Board of Management are satisfied that the man contracted his illness from working in exceptional condition. This is a question of fact.

(Signed) "R. T. REID.

Feb. 1897."

In the case of Pugh *v.* London, Brighton and South Coast Railway, it was held that Pugh was incapacitated from employment by a physical disease of the nerves brought on by fright caused solely by the state of an express train which was approaching with one of the carriages off the line. The severe nervous shock he sustained was held to be as much of an accident as if the train had struck him. (Court of Appeal, 1896, 2 Q.B. 248 : 74 L.T. 724).

In contradistinction to this case, see Victorian Railway Commissioners *v.* Coultas, 13 Ap. Ca., 222, P.C., in which it was held that damages resulting from a nervous shock, caused by fear of a threatened collision which did not occur were too remote to be recoverable. The difference in these two decisions is chiefly due to the fact that the former action rested on contract (insurance), the latter on tort (negligence).

In the case of Sinclair v. The Maritime Passenger's Assurance Company, 4 L.T. 15, it was held that sunstroke was not an accident. "In the term 'accident' as so used, some violence, casualty, or *vis major* is necessarily involved. We cannot think disease produced by the action of a known natural cause can be considered as accidental. Thus disease or death engendered by exposure to heat, cold, or damp, the vicissitudes of climate or atmospheric influences, cannot, we think, properly be said to be accidental—unless the exposure is itself brought about by circumstances which may give it the character of accident." (Chief Justice Cockburn.)

Blackburn, J., laid down the doctrine (in Smith v. London and South Western Railway Company, L.R. 1 C.P. 98; Ex. Ch. L.R. 6 C.P. 14), that if disease is produced by an accident, and suicide is the result of the disease, they are both the natural outcome of the injuries arising out of the accident.

A workman who is apparently but slightly injured is not required by any principle of law to abandon his work and lay by, thus sacrificing his earnings, and perhaps putting his family to privations in order to cheaply exonerate the employer from possible developments of the injury for which he is liable to pay compensation. A mistaken judgment of a workman in resuming work too soon will not defeat his claim. It might be otherwise, however, if he wilfully disregards medical advice. Although by care and skilful treatment the party might have recovered from the injuries received, or was at the time afflicted with a disease which at a more remote period might, in the course of nature, have terminated his existence, his employer might be liable to pay compensation if the injury received, by provoking and irritating the disease, hastened his death.

It has been held in the American Courts that though the plaintiff be afflicted with a disease or weakness which has a tendency to aggravate the injury received, the defendant's negligence will still be held to be the proximate cause, unless it is clearly shown that death must have ensued independently of the injury. This conclusion agrees with the principle of English law. In the case of Isitt v. Railway Passengers Assurance Co. (22 Q.B.D., 504, W.N., 10; 86 L.T., 239, 24, L.J.N.C., 12), it was held by Huddleston and Wills, J.J., that death resulted from an *accident*, although the immediate cause was pneumonia. The party had met with an accident which dislocated his shoulder, and confined him to his bedroom. The pneumonia was owing to a cold contracted whilst in the bedroom; and the debility from the accident rendered him more liable to cold and less capable of resisting illness.

Incapacity to work from natural decay does not amount even to sickness. (Dunkley v. Harrison, 56, L.T., 660).

Bodily Injury. The defendant agreed to pay the plaintiff compensation for "any bodily injury caused by violent, accidental, external and visible means," but not for injuries resulting from weakness or natural disease. The plaintiff sustained injury by breaking a ligament in his knee while he was in the act of stooping. The Court of Appeal held that the plaintiff was entitled to compensation. (*Hamlin v. Crown Accidental Insurance Co.*, 4 R., 407 ; 1893, 1 Q.B., 750 ; 68 L.T., 701 ; 41 W.R , 531). This case is of great importance to miners, who are particularly liable to injuries while in the act of stooping.

In the case of *Cawley v. National Employers' Assurance Association* (1 C. & E. 597), the insurers had agreed to pay compensation for injuries occasioned directly or solely by external or material causes visibly operating upon the person of the assured, *but not in case of death accelerated or promoted by any disease or bodily infirmity.* A. met with an accident, but death would not have ensued had he not at the time of the accident been suffering from gall stones. The court refused to order compensation, the defendant being protected by the conditions of the contract.

Falling into a stream whilst in an epileptic fit was held to be an accident in the case of *Winspear v. Accident Insurance Co.*, 6 Q.B.D. 42 ; 43 L.T. 459. (Court of Appeal.) See also *Reynolds v. Accidental Insurance Co.*, 22 L.T. 820 ; 18 W.R. 1141. Falling under a train whilst in a fit was held to be an accident in *Lawrence v. Accidental Insurance Co.*. 45 L.T. 29 ; 29 W.R. 802.

Breach of Duty.—It was laid down in Atkinson v. Newcastle and Gateshead Water Co. (36 L.T. 761 ; 25 W.R. 794—C.A.) that the mere fact that a breach of a public statutory duty has caused damage does not in itself give a right of action to the person suffering the damage against the person guilty of the breach. Such right of action depends upon the object and language of the particular statute.

SERIOUS AND WILFUL MISCONDUCT.

Section 1, subsection 2 (c) provides that—

> "If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed."

This clause will form the bone of contention under this Act.

What amounts to "serious and wilful misconduct" is entirely a question for the arbitrator. If, however, schemes of compensation be entered into by the employers and workmen somewhat similar to the existing Relief Societies, the question of misconduct, either on the part of the employers or of the workmen, will probably not be inquired into. At present the Miners' Relief Societies generally pay compensation for injuries received while at work, regardless of the negligence or misconduct of either party.

"It would be unfair," said Mr. Chamberlain, "that the workman should be debarred from compensation because of the breach of one, perhaps, out of a hundred rules. . . . Even in the rules embodied in Acts of Parliament there are many that are not of a serious character. . . . . In my opinion, there is no doubt whatever that the wilful breach of a rule distinctly intended to secure the safety of of a man and his fellow workmen would constitute serious and wilful misconduct, and, under these circumstances, the arbitrator would refuse compensation." (Parliamentary Debates, July 6th, 1897.)

"It would be dangerous" said the Home Secretary, in the same debate, "to introduce a hard and fast line, and to prevent an arbitrator from giving compensation in all cases where there had been a breach of rules, including cases where the rule had been disregarded for some years because it had not been absolutely necessary for the safety of the workmen in the mine. . . . The House, I

believe, is of opinion that a deliberate breach of rules understood to be for the safety of the men, and regularly enforced, would constitute serious and wilful misconduct."

"I understand," said the Prime Minister, in a debate, in the House of Lords, on July 26th, 1896, "that magistrates would not fine for an offence if it was not serious. If they fined for an offence, presumably it would be serious, and if serious, it would be a bar to compensation."

"There may be a breach of the rule," replied Lord Herschell, "which could not be described as serious and wilful misconduct. If every breach of a rule for which a magistrate can fine is therefore 'serious and wilful,' that would be a wide interpretation of the clause."

Replying to Mr. Abraham (Mabon), on July 30th, 1897, Mr. Chamberlain pointed out that in a case where a workman was actually told by his overman to do something which led to an accident, it could not be called serious and wilful misconduct on the part of the workman.

"Wilful misconduct," said Mr. Asquith, "is a totally different thing from negligence."—(Parliamentary Debates, July 30th, 1897.)

To exempt the employer from payment of compensation, he must prove that the misconduct was the *proximate*, though not necessarily the *sole* cause of the injury. (See page 42.)

In 1896 seven owners or managers of mines were convicted of offences connected with lamp explosions. The number of workmen convicted of such offences was 65, while 59 others were convicted of neglecting to set sprags and blocks, 44 of offences in connection with the use of explosives, and 137 of carrying matches and smoking in mines. In 28 per cent. of the inquests held by the author during the past five years (1893-7), it was alleged that death resulted from the negligence or misconduct of the deceased. In several of these cases it was impossible to disprove the allegation, for "dead men tell no tales."

LIABILITY OF WORKMEN.

In the case of *Howells v. Wynne*, 15 C.B., N.S. 3; 32 L.J., M.C. 241, it was held that a workman who was present and who could have, but had not, prevented a breach of a special rule, was properly convicted under section 5 of the Summary Jurisdiction Act, 1848, 11 and 12 Vict. c. 43.

It is no excuse for non-compliance with the provisions of a special rule established at a mine that such mine did not require to be placed under such rule. (See *Nimmo v. Clark and another*, 44 Scot. Jur. 267; *Edgar v. Law and Brand*, 44 Scot Jur. 60.)

Under the Mines Regulation Act, 1887, section 60, if an owner, official, or workman is guilty of any offence against the Act which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause serious personal injury to any of such persons, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, he shall be liable to a fine, or to imprisonment, with or without hard labour, for a period not exceeding three months.

There is nothing in the Workmen's Compensation Act, 1897, which excludes the ordinary common law liability of the servant for any act of negligence. He is liable like any one else, and his employer can sue him if, through his negligence he suffers any damage. But no claim of the employer can be set off against the sum due under this Act to an injured workman. (See First Schedule, par. 14, and note (*y*) thereto).

If a workman maliciously and wilfully breaks a contract of service, reasonably believing that the probable consequences will be to endanger human life, or cause serious bodily injury, or expose valuable property to destruction or serious injury, he may be proceeded against summarily, and on conviction is liable to a penalty not exceeding £20, or to imprisonment not exceeding three months, with or without hard labour (38 and 39 Vict., c. 86, ss. 5, 9.)

Under the Act of 1897 the onus is thrown upon the employer to prove that the injury is *attributable* to the serious and wilful misconduct of the workman—an exceedingly difficult task, especially after a great disaster.

"It will take a very great lawyer," said Mr. Chamberlain, "to know the difference between *solely attributable* and *attributable.*" The word "solely" was deleted by the Lords.

It will be observed that under Sec. 6 of the Act, the employer is entitled to be indemnified by a third party whose negligence or misconduct has caused the injury in respect of which the employer has paid compensation. It seems to be immaterial whether the third party is a stranger or a fellow workman, so far as the legal right of the employer is concerned.

ACTIONS INDEPENDENT OF THIS ACT.

Section 1, sub-section 2 (*b*), of this Act provides that "when the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid."

An employer may become liable at common law for personal negligence in the choice of his servants. (Tarrant v. Webb, 18 C.B. 787; Allen v. New Gas Co., 1 Ex. D. 251.) Also for providing bad timber for a scaffold. (Roberts v. Smith, 2 H. & N. 213). Also for allowing a servant to use an unsafe and unprotected machine. (Watling v. Oastler, L.R. 6 Ex. 73.) But the master is

not liable if he did not know it to be in an unsafe state. (Griffiths v. L. & S. Katherine's Dock Co., 13 Q.B.D. 259.)

At common law an employer is liable only for his *personal* failure to take reasonable precautions.

In the case of Senior v. Ward, where the plaintiff knew that there was a rule that the pit ropes should be tested every morning before any one went down, and also knew that the rule was habitually disregarded, and notwithstanding the advice of the banksman, got into the cage and was killed, it was held that the employer was not liable. (28 L.J.,Q.B., 139.)

Common Employment. A workman cannot recover damages at common law for injuries arising from the negligence of a fellow servant. According to the doctrine of "common employment," a servant, when he engages to serve a master, undertakes to run all the ordinary risks of the service, and this has been held to include the risk of negligence on the part of a fellow servant.

A certificated colliery manager and a miner, a foreman and a labourer, a driver and a guard, are fellow servants engaged in a common employment. The injustice of this defence of common employment gave rise to a Parliamentary inquiry which resulted in that doubtful advantage known as "The Employer's Liability Act, 1880."

The following are the leading provisions of that Act:

Where personal injury is caused to a workman

(1) By reason of defects in the ways, works, machinery, or plant; or

(2) By the negligence of a servant to whose orders the workman was bound to conform, and had conformed; or

(3) By reason of an act or omission done or made by another servant in accordance with improper or defective instructions or bye-laws of the employer; or

(4) By the negligence of a fellow-servant having control of any signal points, locomotive, engine, or train, on a railway;

Then the workman, or his representative in case of his death, has a right of action for compensation, unless the

workman knew of the defect or negligence, and omitted within a reasonable time to inform the employer or superintendent thereof, unless the employer or superintendent was already aware thereof.

An employer may still contract with his workmen that they shall not take advantage of the provisions of the Act of 1880. In the case of Griffiths v. Dudley (9 Q.B Div. 357), the employer sent a circular to each workman stating that he must look for compensation to a benefit club instead of to the Act of 1880. The Court held that the workman, by continuing in his employment, had impliedly agreed to the terms of the contract. An employer or workman cannot contract out of the Act of 1897, unless for something certified by the Registrar to be equally beneficial to the workman. Printed notices placed in prominent positions about the works declaring that the workman must look only to the Act of 1897, and not to the Act of 1880, for compensation, would probably protect the employer from an action under the latter act. (See Carus v. Eastwood, 32 L.T. Rep., N.S. 855.)

The Fatal Accidents Act, 1846, gave no new cause of action, but only substituted the right of the representative to sue in the place of the right which the deceased himself would have had if he had survived; that is, a right to recover in a case where the maxim *actio personalis moritur cum personâ* would otherwise have applied. (See *Bradburn v. Great Western Railway*, 31 L.T. Rep., N.S. 464.) The relatives may sue for whatever damages they may think a jury will award them; but when the cause of action arises from negligence which is only actionable under the Act of 1880, the amount of compensation under that Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury. (43 and 44 Vict., c. 72, sect. 3.)

The *Workmen's Compensation Act, 1897*, sect. 1, sub-sect. 4, enacts that

"If *within the time hereinafter* in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

"In any proceedings under this sub-section, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded, and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act."

This sub-section differs from Lord Campbell's Act, and the Act of 1880, as to the time within which to bring an action independently of this Act, in case of death from injury; and it seems that this sub-section would not apply to an action brought after six months from date of death.

Should an injured workman sue his employer for damages independently of this Act, for injuries either exceeding or not exceeding two weeks in duration, the employer will still be entitled to plead "contributory negligence," or the doctrine of "common employment," or apply the maxim "*volenti non fit injuria*" (No injury is done to a consenting party.") It seems, however, that the costs of an unsuccessful action for damages for non-fatal injuries cannot be deducted from the amount of compensation subsequently awarded by an arbitrator in another court. (See S. 1, s.s., 4 and Sched. 1., 14.

Where by one act of negligence, personal injury is caused to A, and also damage to his property, he may bring separate actions for the damage and for the personal injury. Recovery for the former is no bar to a recovery for the latter. (*Brunsden v. Humphrey*, 14 Q.B.D. 141, C.A.)

As to the liability of contiguous mine owners for injury caused by water flowing from one mine into the other. see Smith *v.* Kenrick, 7 C.B. 515; Baird *v.* Williamson, 15 C.B., N.S. 376; also Roscoe's N.P.

One of two co-proprietors of a mine was held civilly liable for the personal negligence of the other, in *Ashworth v. Stanwix* (30 L.J., Q.B., 183).

Criminal Liability.—Nothing in this Act affects the criminal liability of the employer, or his agent. Generally, a person upon whom the law imposes any duty, or who has by contract taken upon himself any duty tending to the preservation of life, and who neglects to perform that duty, and thereby causes the death of another, is guilty at least of manslaughter. (Stephen's Cr. L. art. 211; *R. v. Curtis* 15 Cox, C.C. 746.) It is no defence in such cases that the deceased was guilty of contributory negligence. It matters not whether the deceased was deaf, or drunk, or negligent, or in part contributed to his own death; and in this consists a great distinction between civil and criminal proceedings. (*a*) But a verdict of manslaughter is only justified where the death is the direct result of the act or omission. Thus, the negligence of a servant will not generally render his employer guilty of manslaughter if death ensue, unless the employer be proved to have known of the incompetency of the servant. (*b*)

In the case of *Dyer v. Munday* (1895) 1 Q.B., 742, the Court of Appeal held that a master is civilly liable in damages for the criminal act of his servant, if the jury find that the servant did the act in the course of his employment.

Sub-contracting.—In the case of *Brown v. Butterley Coal Co.* (53 L.T. 964) the defendants were owners of a mine worked under the "butty" system, by which a man

contracts with the owners to bring coal up at so much per ton, and for this purpose employs men under him. The deceased had been so employed and had been killed by an explosion. *Held*, that he was in the employ of the owners, not of the contractor.

Negligence of Contractor's Workmen.—A district council engaged a contractor to do some engineering work, the *latter* specially bargaining to be responsible for all damage arising from the work. The Court of Appeal held that the council could not shelter themselves behind their contractor in respect of a breach of duty, and were liable for personal injuries resulting from the negligence of the contractor's workmen. (C.A. 1896, 74 L.T. 69 Hardaker v. Idle District Council.)

Section 4 of this Act is clear on the liability of the employer as against that of the contractor in all proceedings under the Act, the employer, however, being entitled to be indemnified by any other person who would have been liable independently of that section.

The House of Lords recently decided that if a company lend wagons *gratuitously* to another company, the lending company has no direct duty to see that the wagons are in a proper condition, and is therefore not responsible for injuries arising therefrom. (*Caledonian Rail. Co. v. Mulholland* (1897), 47 W.N. 159). The same rule would probably apply to all machinery or plant gratuitously lent by one employer to another.

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a) Per Pollock, C.B. in *R. v. Swindall*, 2, C. and K. 230.
(*b*) *R. v. Lowe*, 3, C. and K. 123; *R. v. Haines*, 2, C. and K. 268

SCHEMES OF COMPENSATION.

Section 3 of the Act provides that

(1). "If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employers and workmen certifies that any scheme of compensation, benefit, or insurance for, the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole (*a*) not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply, notwithstanding any contract to the contrary made after the commencement of this Act."

"Our object in inserting this clause," said Mr. Chamberlain, "is that we do not wish to prevent a workman doing better for himself by the consent and with the goodwill of his employer than legislation can do for him."

"We believe," said Sir Matthew White Ridley, on introducing the Bill, "it is better to provide compensation by mutual agreement rather than by law. We believe that if both parties could come to an agreement to settle their own differences— I would rather say their own wants—in their own way, it would be a more satisfactory way than by the most liberal legislation Parliament can provide. It may be possible that some reconstruction of the existing societies may be involved; but we desire to give room to them to provide further advantages." (See *Times*, May 4th, 1897)

It was at first believed that this Act would destroy the admirable Relief Societies which miners, railway servants,

(*a*) "The words 'on the whole,' give the widest possible discretion. . . . The Registrar is entitled, as the clause now stands, to look at the collateral benefits of the scheme." (*The Lord Chancellor*: see *Times*, July 27th, 1897).

and other workmen, in conjunction with their employers, had established in various parts of the country. The total membership of the Miners' Relief Societies alone amounted in 1895 to 317,004. The number of miners' widows in receipt of annuities was 3,108, children, 4332; and the number of disablement cases dealt with and relieved during the year was 49,008. It was feared also that the Act would gradually destroy the various Friendly Societies such as the Oddfellows, the Foresters, and others which provide relief to their members in cases of accident, sickness, old age, or other infirmity. In reply to these fears which were expressed in Parliament, Mr. Chamberlain said "I have no hesitation whatever in saying that this proposal will give an immense impetus to Friendly Societies. It will throw upon them the burden of their due work. It will leave open to them the dealing with those trumpery accidents which ought properly to be provided for by the thrift of the workmen themselves. I call them 'trumpery' accidents, because they do not detain the workman long from his work. It will leave open all that is connected with the health and superannuation of the workman, and I am convinced that, when the burden is taken off the workman from providing for accidents which occur in the course of his employment, he will have the money, and he will spend it in making provision in other directions through the Friendly Societies." (See *Times*, May 19th, 1897.)

Schemes by mutual agreement. The Colonial Secretary is so convinced of the advantages of mutual agreements between employer and workmen, that he has on several occasions called attention to the practicability of such arrangements. "I value these schemes" said he, "for three reasons. Under a scheme it is possible to have greater freedom and variety than under any Act of Parliament. Local and trade conditions can be met as Parliament cannot meet them in dealing with the whole of the combined industries of the country. Secondly, it is possible to have arrangements more favourable to the workman than any the House would dare to propose. There will always be exceptional

employers, who will be willing to make larger sacrifices than any which the legislature imposes. Thirdly, and I am not certain that this is not the most important of all—it is desirable that these schemes should be arranged, because, I believe that the best security for the satisfactory administration of this law is in the joint effort of workmen and employers, and I do not believe that the result will ever be so satisfactory under any other arrangement. One great advantage of schemes like the Miners' Relief Fund was that they had brought in the workpeople to join in the administration of the fund and in the supervision of payments, and, to a certain extent, to make them responsible for the contributions."

A supposed scheme. "Suppose a scheme established" says Mr. Chamberlain, "to which the firm concerned contributed the full amount of its liability as valued by the Registrar of Friendly Societies. Let us assume that the firm contributed £1,000 a year, and the workpeople another £1,000. There would then be an opportunity of giving double the benefits given under the Act. Not that the amounts would necessarily be doubled, but the contributions might be disposed of in other ways and for other purposes than those contemplated in the Bill. They might for instance, give assistance in case of accidents causing injuries that lasted less than a fortnight, or in cases of illness, or by way of superannuation." See *Times*, July 7th, 1897.

Speaking on the same subject on another occasion, the right hon. gentleman remarked :—

"This is a scheme which in this case has been suggested and will be carried out. The employer will take his books for a certain period and from them will extract the number of accidents, shewing the average number he has had during five or ten years. He will apply the schedule of the Bill to these accidents and calculate the cost. Then he will go to his workpeople and say, 'Now the cost under this Bill to me is on an average £100 per annum. If you will form a Society I will place at your disposal this £100 if you will subscribe to it your penny or twopence per week. You will

manage it because I will allow you to elect your delegates, who shall be a majority of the committee. I will come on myself or appoint a foreman to represent me, but I do not want a majority of votes upon it; and the Committee shall administer a fund to which I shall contribute £100. The fund will be a larger fund than will be required to provide compensation under the Bill; but the surplus you will dispose of in providing for sickness, minor accidents, or in improving the scale of compensation under the Bill, or for any other purpose; and if you can save anything by reducing the number of accidents, by watching and providing against malingering, by preventing abuses, then you will have the £100 I pay, in addition to your contributions to devote to other purposes to which you attach importance.' That is the scheme, and a scheme of that kind would secure the employer against the abuses which all employers fear from this Bill; it would secure a supervision of the Bill, a desire to prevent malingering, and it would give workpeople great advantages, which otherwise they cannot obtain, and would place them in a friendly and harmonious position in regard to the employer, and would I believe contribute very largely to those good relations which we all desire to maintain." (See *Times*, July 16th, 1897.)

Even before the Bill had received the Royal Assent, one of the largest business concerns in the Metropolis—the South Metropolitan Gas Company—under the able management of Mr. George Livesey, had entered into an amicable arrangement with its numerous workmen, by which the Act was to be superseded by a scheme conferring upon the workmen advantages undoubtedly superior to those offered by the Act. Every man but one out of some thousands of men had voluntary accepted the scheme. (See *Times*, July 16th, 1897.)

Writing to the Author, Mr. Livesey says—"The subscriptions of the men, added to those of the Company, will secure greater benefits than could be obtained under the Act. We give a pension to the widows, which is infinitely better than a lump sum. Workmen like a share in the

management of the fund—this creates an interest, and is the only way to secure their co-operation in the prevention of accidents. They also like the certainty and the readiness with which they obtain relief under a mutual fund. It further has the great advantage of bringing masters and men together in friendly association for a common good."

The following specimen rules are extracted from schemes which have already been accepted and adopted by workmen and employers; subject, of course, to the approval of the Registrar of Friendly Societies:—

ACCIDENT FUND.

RULES.

NAME.

I.—This Fund shall be called the "ACCIDENT FUND."

OBJECT.

II.—This Fund is established by mutual agreement between the Company and their Workmen as a substitute for the Employers' Liability Act, 1880, and the Workmen's Compensation Act, 1897. The Fund so established shall be used to compensate Workmen for loss by reason of accident occurring to them while in the employ of the Company. Every accident will be admitted to the benefits of this Fund, irrespective of cause, subject to the limitations and conditions specified in the following Rules.

MEMBERSHIP

III.—All men in receipt of weekly wages, employed by the Company, including all odd or casual men, are invited to contribute to the Fund, and accept the benefits which it provides in case of accident, in lieu of any claim which they or their representatives might otherwise have had against the Company under the Acts named in Rule 2. The payment of the weekly or monthly subscription in advance shall constitute acceptance of the conditions and shall entitle to

the benefits of the Fund, and shall be deemed a contract within the provisions of Section 1, Sub-Section 4 of the Workmen's Compensation Act, 1897.

Committee of Administration.

IV.—The Fund shall be administered by a Committee which shall consist of five representatives of the employers and six representatives of the workmen, the latter to be elected by the men at an annual meeting, every August. The Committee shall elect its own chairman, and may delegate any of its duties to a Sub-Committee.

Auditors.

V.—Two Auditors shall be appointed annually by the Committee.

Accounts.

VI.—The Accounts shall be kept by the Company's Officers at the Company's expense, and all money shall be in charge of the Company. Should it be found practicable to accumulate a Reserve Fund, it shall be invested in any of the investments in which Trustees are authorised to invest trust moneys by Acts of Parliament.

Income—How Raised.

VII.—The Workmen will contribute the same amount as the Company.

The Company shall pay quarterly on the maximum number of men (including odd men) employed during the quarter. . . . shillings and. . . . pence for every man, whether or not a Member of the Fund.

Workmen's Contributions.

Every man in receipt of weekly wages (including odd men) who accepts the proposal shall pay either. . . . per week, or. . . . a month, or. . . . a quarter, as may be most convenient.

Benefits—Non-Members.

VIII.—Those Workmen, whether regular or odd men, who do not subscribe to the Fund will, in consideration of

the Company's contribution thereto in their behalf, be paid from the Fund what they can obtain and no more under the "Workmen's Compensation Act, 1897," without medical attendance, and with no undertaking by the Company to find employment on recovery.

Members.—Non-Fatal Accidents.

The allowances, with free medical attendance, provided by the Fund shall be at the following minimum rates:—

Class A.—For workmen whose injuries have been caused by their own gross negligence, ... a week.

Class B.—For pure accidents, not less than ....a week.

Class C.—For accidents clearly caused by negligence on the part of the Company or its Officers,....a week.

[Note.—The Miners' Relief Societies find it preferable to adopt a uniform rate of payment, regardless of the question of negligence].

The class in which any man is to be placed, shall, when in doubt, be decided by the Committee.

These payments to be continued until recovery, or until the Doctor certifies that the man is fit for work, or until he is proved to be permanently incapacitated.

Class A.—The Company gives no undertaking as to future employment.

Class B.—Work will be found at not less than 24s. a week, if the wages exceeded that amount.

Class C.—Work will be found at not less than four-fifths of the day wages previously received, and in no case less than 24s., if the wages exceeded that amount.

Permanent Disablement.

In cases of permanent incapacity to do any work the Committee shall decide what permanent weekly allowance or lump sum shall be paid, but the total shall not be less than he could have obtained under the Act of 1897.

Fatal Accidents.

A pension shall be granted to the widow while leading a respectable life, or until re-marriage, when a sum not exceeding £10 shall be paid to her. Such pension to be not less than .... a week, but during the first three years the Committee may, according to circumstances, grant any amount not exceeding ....per week, which may be reduced gradually to the minimum of.... at the end of three years, or sooner. If the deceased man was a widower leaving children dependent, or a man leaving other dependent relatives, the Committee shall decide what, if any, allowance shall be made, but it shall in no case exceed what would have been given had there been a widow with children.

Three Days' Disablement.

IX.—No claim shall be made on the Fund for less than three working days' disablement.

Notice of Accident.

X.—Every workman intending to claim on the Fund must give notice, personally or in writing, to the Overman as soon as possible, or at the outside within three days after the occurrence of the accident. In case of further delay, the Committee shall have the option of dating the payment of allowance from such time as they consider fair.

Medical Examination.

XI.—The certificate of any qualified medical man that the claimant is unable to work by reason of some injury, will, when accompanied by a form of application, be accepted by the Committee, but, immediately any claim is formally made, the claimant must undergo examination by the Surgeon appointed for this Fund, on receipt of an order from the Committee or Officers of the Company. Anyone refusing to comply with such order shall have his allowance stopped pending the consideration of the case by the Committee.

Behaviour while in Receipt of Weekly Allowance.

XII.—Every person in receipt of weekly allowance must be under qualified medical attendance during the whole of the time he is receiving such allowance, and if his medical attendant or the Fund Doctor, or the visitor, or any member of the Fund shall report to the authorised officer neglect of ordinary precautions, such a late hours and exposure, use of intoxicants against doctor's orders, or if the injured person do anything to retard his recovery, or fail to go to work when able to do so. the Committee shall have power to stop the further payment of allowance, either wholly or partially.

Persons Leaving Home.

XIII.—Any person receiving weekly allowances, who may desire to leave home for change of air, &c., must inform the of his intention of doing so, such shall then cause him to be examined by the Fund Doctor, who will decide whether such change is desirable or not.

Weekly Medical Certificate.

XIV.—Injured persons receiving weekly allowances, who are living at a distance beyond the supervision of the examining doctor, must supply the authorised Officer, not later than Thursday of each week, with a medical certificate of their inability to work.

Allowance to Whom Paid.

XV.—No allowance will be paid until clear legal proof has been supplied to the Committee that the claimant is the legal representative of the deceased.

Conditions under which Accident Allowance will be Paid

XVI.—Before any allowance can be granted for any accident it must be proved:—

1. That the accident occurred while in the employ of the Company.
2. Or while on the business of the Company.
3. If, in the opinion of the Committee or Sub-committee, the accident was caused by the injured person being under the influence of intoxicating liquor, or by his gross negligence, or wrongful act, the allowance shall be on the lowest scale—Class A. In case of death, or permanent disablement, the Committee shall decide what allowance shall be made, in accordance with Rule VIII.

Declaring Off Fund.

XVII.—Every person resuming work, after being in receipt of weekly allowance, must report the same, at once, to the Secretary, or authorised Officer.

Annual Balance-sheet.

XVIII.—A Balance-sheet and Statement of Accounts shall be prepared in February of each year, and posted in prominent positions at the various Works, and when desirable a Meeting of the Workmen will be held for the consideration of the same.

Extras

XIX.—When the Committee shall consider that the interests of an injured man or of the Fund will be thereby served, they shall have power to grant extras, such as a sum of money to enable him to go into the country, or to a Convalescent Home, or for a surgical appliance.

Sub-Committees.

XX.—Sub-committees may be appointed by the Committee to inquire into accidents in accordance with the following regulations:—

1. An inquiry shall be made as soon as possible into every accident, except as provided below, if the injured man claims accident money. In the case of trivial accidents where an Officer of the Company,

a Member of the Sub-Committee, and the injured Workman agree that it would be a waste of time to summon a sub-committee, a statement of the case, signed by these three persons, shall be entered in the Accident Book.

2. The Committee or sub-Committee may call witnesses and hear evidence, and thoroughly investigate all the conditions and circumstances connected with the accident.
3. If, in the opinion of the Committee or Sub-Committee, anything can be done to prevent a similar accident in future, they shall make such recommendation as they may consider necessary.
4. The enquiry shall take place in public, that is, in the presence of as many of the Workmen as can conveniently attend without unduly interfering with their work, and, where practicable, the enquiry shall be held on the spot where the accident happened.
5. The verdict of the Committee of inquiry shall be posted up in one or more conspicuous places about the works, and a summary of the case and the proceedings thereon, with the verdict and the names of the Committee, shall be recorded in a book kept at the works for the purpose. A copy of this summary shall also be sent to the Secretary of the Company to be laid before the Directors.

NOTE.—The following questions are submitted as a guide to the Committee of Inquiry to be used at their discretion, to which they may add any remarks they may consider necessary :—

QUESTIONS.

1. Was the accident caused by any neglect on the part of anyone connected with the Company, and if so who was in fault ?

2. Was there any defect in the plant or materials used, and if so, state what it was ?

3. Was there any mistake in the manner in which the work was done, and if so, state its nature ?

4. Was the accident the result of any negligence or carelessness on the part of the injured man ?

5. Was it a pure accident for which no one was to blame ?

NOTICE TO CLOSE FUND.—DISPOSAL OF BALANCE.

XXI.—Six months' notice from the Company or Workmen shall terminate the existence of this Fund, and any balance remaining after meeting all liabilities shall be distributed as may be arranged between the Company and the Workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

ALTERATION OF RULES.

XXII.—Notice of any proposed increase or decrease in the amount of contributions or an alteration of the scale of allowances or any alteration or addition to these Rules, shall be posted at all the offices of the Company for fourteen days, and Meetings of Workmen will be held for an expression of opinion upon the same. If approved by a two-thirds majority, the alterations or additions shall be incorporated in the Rules.

AMBIGUOUS RULES.

XXIII.—In all cases when the meaning of a Rule is disputed the decision of the Committee shall be final.

With a few slight alterations the ordinary rules of a Relief Fund or Friendly Society may satisfy the Registrar as a scheme under the Act.

AMOUNT OF COMPENSATION

"It is a preposterous presumption," said Mr. Chamberlain, "that the arbitrator will give the maximum in every case." Full discretion is given to the arbitrator to award any sum not exceeding the maximum mentioned in the First Schedule. (See page 24). "A man," said Mr. Chamberlain, "may be partially incapacitated: he may still be able to perform other work at a little less remuneration, such a case, for instance, as that of a man who has been earning 30s. a

week, and who after an accident gets only 25s. The amount of compensation should be limited to the extent of the incapacity."—Parly. Debates, 18th May, 1897.

Prior to the Compensation Act, 1897, the allowances made by the various benefit societies averaged about one-third of the weekly wages.

Under a Treasury warrant a Crown workman permanently disabled got two-fifths of his wages. The warrant will probably be made a scheme under this Act.

The principal railway companies paid from six to twelve shillings a week to disabled workmen.

The London and North Western Railway Co. paid a sum not exceeding a guinea per week, for 52 weeks, in cases of total disablement; and £50 in cases of death.

The Great Western Railway Company paid their widows four shillings a week, and a small allowance for each child.

The Miners' Relief Societies paid disabled members from six to ten shillings a week, and in most cases five shilling a week to each widow, and two shillings and sixpence a week for each child under 13 years of age.

The Oddfellows, Foresters, &c., pay about eight shillings a week for the first 26 weeks, after which the relief is reduced in most cases by one-half.

Statistics clearly prove that a high rate of compensation during incapacity is an inducement to some workmen to malinger, especially in those trades where men are not fully employed at certain periods of the year.

"No man should have more after an accident than he had before."

"Workmen," said Mr. Burt, M.P., "like other people have a great deal of human nature in them, and if Parliament increased the benefits beyond a certain point, and gave a man more for lying idle than for working, he might be put under considerable temptation to remain idle. The best way to deal with this would be to get the workmen and the employers to co-operate." (Parly. Debates, May 17th, 1897).

APPENDIX A.

Statutes referred to in the Workmen's Compensation Act, 1897.

The Regulation of Railways' Act, 1873, 36 and 37 Vic., c. 48.

Section 3.—"The term 'railway' includes every station, siding, wharf, or dock of or belonging to such railway, and used for the purpose of public traffic (*a*).

"The term 'railway company' includes any person being the owner or lessee of or working any railway in the United Kingdom constructed or carried on under the powers of any Act of Parliament."

Tramways connected with mines and light railways come within the Act, but not ordinary street tramways. (Att.-General, Parly. Debates, 31st May, 1897).

The Light Railways' Act, 1896, 59 and 60, Vic., c. 48.

Section 28.—"The expression 'light railway company' includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by this Act, or who are working the same under any working agreement."

Note.—The word "railway" is used in a broader sense in the Employers' Liability Act, 1880, and is not confined merely to railways used by railway companies, but includes a temporary railway down by a contractor, or such as is used by a colliery owner: (Doughty v. Firbank, 10, Q.B. Div., 358).

Factory and Workshop Act, 1878 (41 Vic., c. 16).

Section 93.—"The expression 'textile factory' in this Act means:—

"Any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to

(*a*) The definition of "Railway" in the Act of 1873 is incomplete.

the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, tow, china, glass, coeoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof.

"Provided that print works, bleaching, and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works, shall not be deemed to be textile factories.

"The expression 'non-textile factory' in this Act means:—

"(1) Any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Fourth Schedule to this Act (*post*).

"(2) Also any premises or places named in Part Two (*post*) of the said Schedule wherein, or within the close or curtilage or precints of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

"(3) Also any premises wherein, or within the close or curtilage or preeints of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them; that is to say:—

"(*a*) In or incidental to the making of any article or of part of any article, or

"(*b*) In or ineidental to the altering, repairing, ornamenting, or finishing of any article, or

"(*c*) In or ineidental to the adapting for sale of any artiele.

and wherein, or within the close or curtilage or preeints of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

"*The expression 'factory' in this Act means textile factory and non-textile factory, or either.*

* * * * * * *

"A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory (Act of 1891, section 31.)

"Any premises or place shall not be exeluded from the definition of a factory by reason only that sueh premises or plaee are or is in the open air (41 Viet., c. 16, s. 93).

Note.—The Act would probably apply to "lift" and other accidents occurring in commercial houses, hotels, stores, drapers, and other retail establishments where more than twenty persons (not being domestie servants) are employed. Sir C. Dilke's amendment to include all "lifts" was negatived.

The Factory and Workshop Act, 1878. Fourth Schedule.

Sections 93, 96.

Part I.—Non-Textile Factories.

(1.) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper; "Print Works.

(2.) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on; "Bleaching and dyeing works."

(3.) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles; "Earthenware works."

(4.) "Lucifer match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood; "Lucifer match works."

(5.) "Percussion cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps; "Percussion cap works."

(6.) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidenal to making cartridges, except the manufacture of the paper or other materials that is used in making the cases of the cartridges; "Cartridge works."

(7.) "Paper staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power; "Paper staining works."

(8.) "Fustian cutting works," that is to say, any place in which persons work for hire in fustian cutting; "Fustian cutting works."

(9.) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on; "Blast furnaces."

(10.) "Copper mills;" "Copper mills.

(11.) "Iron mills," that is to say, any mill, forge, or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel; "Iron mills."

(12.) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on: except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work. "Foundries."

(13.) "Metal and indiarubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of indiarubber or gutta-percha or of articles made wholly or partially of indiarubber or gutta-percha; "Metal and Indiarubber works."

(14.) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on; "Paper mills."

(15.) "Glass works," that is to say, any premises in which the manufacture of glass is carried on; "Glass works."

(16.) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on; "Tobacco factories."

(17.) "Letterpress printing works," that is to say, any premises in which the process of letterpress printing is carried on; "Letterpress printing works."

(18.) "Bookbinding works," that is to say, any premises in which the process of binding is carried on; "Bookbinding works."

(19.) "Flax scutch mills;" "Flax scutch mills"

Part II.—Non-Textile Factories and Workshops. Sections 93, 96.

(Note.—See Section 93 (2) *ante*).

(20.) "Hat works" that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on; "Hat works."

(21.) "Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power; "Rope works."

(22.) "Bakehouses," that is to say, any place in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived; "Bakehouses."

(23.) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as hereinbefore defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power; "Lace warehouses."

(24.) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired; "Shipbuilding yards."

(25.) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals; "Quarries."

(26.) "Pit banks," that is to say, any place above ground adjacent to a shaft of a mine in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts. "Pit banks." 35 & 36 Vict. c. 76 35 & 36 Vic. c. 77.

The Factory and Workshop Act, 1895.

Section 23.—"(1.) The following provisions, namely,

(i.) Section 82 of the principal Act;

(ii.) The provisions of the Factory Acts with respect to accidents, &c., &c.,

Shall have effect as if—

(*a*) Every dock, wharf, quay, and warehouse, and, so far as relates to the process of loading or unloading therefrom or thereto, all machinery and plant used in that process; and

(*b*) Any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building,

Were included in the word '*Factory*,' and the purpose for which the machinery is used were a manufacturing process, and as if the person who by himself, his agents, or workmen temporarily uses any such machinery for the beforementioned purpose were the *occupier* of the said premises; and for the purpose of the enforcement of those sections the person having the actual use or occupation of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery, shall be deemed to be the *occupier* of a factory.

"(2.) The provisions of this Act with respect to notices of accidents and the formal investigation of accidents shall have effect as if—

(*a*) Any building which exceeds 30 feet in height and which is being constructed or repaired by means of a scaffolding;

(*b*) Any building which exceeds 30 feet in height and in which more than 20 persons, not being domestic servants, are employed for wages;

were included in the word '*Factory*,' and as if in the first case the employer of the persons engaged in such construction or repair, and in the second case, the occupier of the building, were the *occupier* of a factory."

The Coal Mines Regulation Act, 1887, 50 and 51 Vict., cap. 58.

Section 3.—"This Act shall apply to mines of coal, mines of stratified iron, mines of shale, and mines of fireclay; and . . . . the word 'mine' means a mine to which this Act applies."

Section 75.—"'Mine' includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in, and adjacent to, and belonging to the mine. 'Owner' means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine."

Metalliferous Mines Regulation Act, 1872. 35 and 36 Vict., c. 77.

Section 3.—"This Act shall apply to every mine of whatever description other than a mine to which the Coal Mines Regulation Act (1887) applies."

Section 41.—The definitions of 'mine' and 'owner' correspond with those given in Section 75 *(supra)* of the Coal Mines Regulation Act, 1887.

The Quarries Act, 1894, 57 and 58 Vict., c. 42

Section 1.—"This Act shall apply to every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than 20 feet deep." In the case of Sims v. Evans, 23 W.R. 730, it was held that a slate quarry, worked by means of underground levels, is a mine within the meaning of the Metalliferous Mines Regulation Act, 1872.

The Coal Mines Regulation Act, 1887., 50 and 51 Vict., c. 58.

Section 70.—Application of Fines.—"Where a fine is imposed under this Act for neglecting to send a notice of any explosion or accident or for any offence against this Act which has occasioned loss of life or personal injury, a

Secretary of State may (if he thinks fit) direct such fine to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by the explosion, accident, or offence, or among some of them.

"Provided that—

(i) Such persons did not in his opinion occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence.

(ii) The fact of the payment or distribution shall not in any way affect or be receivable as evidence in any legal proceedings relative to or consequential on the explosion, accident, or offence."

(N.B.—See, however. Sec. 1, Sub-sec. 5, of the Workmen's Compensation Act, 1897.)

The Metalliferous Mines Regulation Act, 35 and 36 Vict., c. 77, s. 31, and the Amending Act, 38 and 39 Vict., c. 39 also provide for the payment of fines in certain cases to injured persons or their relatives.

The Factory and Workshop Act, 1878 (Penalties).

Section 82.—"If any person is killed or suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, or in consequence of the occupier of a factory or workshop having neglected to fence any vat, pan, or other structure required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, the whole or any part of which may be applied for the benefit of the injured person or his family or otherwise as a Secretary of State determines."

The Factory and Workshop Act, 1895. (Penalties.)

Section 13.—"Section 82 of the principal Act, which provides penal compensation to persons injured by neglect to fence machinery, shall extend to any death or bodily injury or injury to health in consequence of the occupier of a factory or workshop having neglected to observe any provisions of the Factory Acts, or any special rule or requirement made in pursuance of the Act of 1891.

"Provided that in the case of injury to health the occupier shall not be liable under this section unless the injury was caused directly by such neglect."

The Fatal Accidents Act, 1846 (9 and 10 Vict., c. 93.)

(Lord Campbell's Act—not applicable to Scotland.

Section 2.—"Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been caused."

Section 5.—"The word 'parent' includes father, mother, grandfather, grandmother, stepfather, and stepmother; and the word 'child' includes son and daughter, grandson and grand-daughter, and stepson and stepdaughter.

(Note.—Nephews, nieces, brothers, and sisters are excluded from the benefits of this Act.)

A posthumous child, if born within due time, may claim under the Fatal Accidents Act, 1846 (The George and Richard, 24 L.T. Rep. N.S. 717); but only such of the above-mentioned relatives as were "wholly or in part dependent upon the earnings of the workman at the time of his death" can claim compensation under the Workmen's Compensation Act, 1897 (see "Dependants," Sect. 7, Sub-sec. 2). A wife living in adultery or apart from her husband is not entitled under the Fatal Accidents Act, 1846, to compensation for the death of her husband if she had no reasonable prospect or expectation of pecuniary benefit by the deceased remaining alive (Stimpson *v.* Wood, 59 L. T. 218; Harrison *v.* L. and N.W.Ry,, 1 C and E. 540). Before she can claim under the Act of 1897, she must be wholly or in part dependent upon the earnings of the workman at the time of his death." (Sect. 7, s.s. 2). A bastard is not a "child" within the meaning of the Act. (Dickenson *v.* N.E.Ry. Co., 2 H. & C. 735).

Superannuation Act, 1887, 50 and 51 Vict., c. 67.

Section 1.—"1.—(1.) Where a person employed in the Civil Service of the State is injured—

(*a*) In the actual discharge of his duty; and

(*b*) Without his own default; and

(*c*) By some injury specifically attributable to the nature of his duty,

The Treasury may grant to him, or, if he dies from the injury, to his widow, his mother, if wholly dependent on him at the time of his death, and to his children, or to any of them, such gratuity or annual allowance as the Treasury may consider reasonable, and as may be permitted by the terms of a warrant under this section.

(2.) The Treasury shall forthwith after the passing of this Act frame a warrant regulating the grant of gratuities and annual allowances under this section, and the warrant so framed shall be laid before Parliament.

(3.) Provided that a gratuity under this section shall not exceed one year's salary of the person injured, and an allowance under this section shall not, together with any superannuation allowance to which he is otherwise entitled, exceed the salary of the person injured or £300 a year, whichever is less."

Note.—See section 8 of the Workmen's Compensation Act, 1897, as to the additional powers given to the Treasury by that Act.

The Friendly Societies Act, 1896, 59 and 60 Vict., c. 25.

Section 8, Sub-section 1—Proviso.—" Provided that a friendly society which contracts with any person for the assurance of an annuity exceeding fifty pounds per annum, or of a gross sum exceeding two hundred pounds, shall not be registered under this Act."

Section 16.—" A society assuring a certain annuity shall not be entitled to registry, unless the tables of contributions for the assurance, certified by the actuary to the National Debt Commissioners, or by some actuary approved by the Treasury, who has exercised the profession of actuary for at least five years, are sent to the registrar with the application for registry."

Section 41.—A member, or person claiming through a member, of a registered friendly society or branch, shall not be entitled to receive more than two hundred pounds by way of gross sum, together with any bonuses or additions declared upon assurances not exceeding that amount, or (except as provided by this Act) fifty pounds a year by way of annuity, from any one or more such societies or branches.

Note.— Par. 15 of the First Schedule of the Workmen's Compensation Act, 1897, provides that the above sections shall not apply to a friendly society which undertakes to pay compensation in accordance with a scheme certified by the Registrar under Sect. 3 of the said Act.

The receip of relief under a Scheme registered under the Friendly Societies Act, 1896, will not disqualify the recipient from additional relief out of the poor rates. (Outdoor Relief Friendly Societies Act, 1894.)

APPENDIX B.

FORMS.

No. 1.—The following is a suggested FORM OF NOTICE OF INJURY:—

No. 2, King Street, Newcastle.

To the Black Vein Coal Company, Newcastle.

Please take notice that on the day of 1898, George Smith, of No. 2, King Street, Newcastle, was killed (or injured) by a fall of Coal at your Colliery, at while he was in your employ.

Dated this day of 1898.

Yours, &c.,

MARY SMITH,

Widow, or wife of, (or solicitor for), the said George Smith.

(For regulations as to serving this notice, see Sec. 2 of the Act.)

No. 2.—NOTICE OF CLAIM (In case of Death).

To the Black Vein Coal Company, Newcastle.

Please take notice that I claim the sum of £150, (or a sum equal to three years' wages, whichever is the larger) *as compensation for the death of my husband, George Smith, of No. 2, King Street, Newcastle, who died on the day of 1898, from injuries received on (the same day) whilst in your employ at your Colliery at*

Signed—

Address—

Date—

No. 3.—NOTICE OF INJURY AND CLAIM COMBINED (In case of Death):—

To the Railway Company, Paddington

Take notice that I claim the sum of £ as compensation for the death of my husband, John Smith, of No. 20, Market Street, Bristol, who was knocked down and killed by a passenger train at Swindon whilst in your employ on the 1st July, 1898.

Signed, MARY SMITH,

Address, 20, Market Street, Bristol.

Date, 2nd July, 1898.

No. 4.—Claim for Compensation for Injury (Notice of Injury having been duly given):—

To the Merthyr Coal Company, Aberdare.

Take notice that I claim the sum of (ten) shillings per week, from the 15th July, 1898, until such date as I shall be able to resume work, as compensation for injuries received by me on the 1st instant at your colliery at

Signed,

Address,

Date.

Note.—*The above notices may be required in a different form under a scheme agreed upon by the employer and workmen under Section 3 of the Act.*

FORM OF AN AWARD.

No. 5.—Workmen's Compensation Act, 1897.

In the matter of a dispute between the CARDIFF COAL COMPANY, Cardiff, Coal Merchants,

and

JOHN SMITH, of Alma Street, Cardiff, hoodier, referred to me pursuant to the above-mentioned Act.

I, as arbitrator, determine as follows:—The said Cardiff Coal Company shall pay to the said John Smith, the sum of (nine) shillings per week from the Fifteenth day of July, 1898, until he is able to resume work (or until the 30th September, 1898).

The costs of this arbitration are to be paid by the said

Dated this day of 1898.

(Signed),

Note.—*A memorandum of every award or agreement under this Act should be sent to the Registrar of the County Court. (See par. 8, second schedule). The award may be either oral or in writing.*

No. 6.—REFERENCE OF A DISPUTE.

Reference of a dispute may be in the following form :—

WORKMEN'S COMPENSATION ACT, 1897.

Dispute between the STEAM COAL COMPANY, Newcastle, and
GEORGE SMITH. of , miner, as to whether any, and if so, how much compensation is due from the said Steam Coal Co. to the said George Smith, under the above Act.

The above-named parties by consent refer the dispute between them to The Board of Management of the Miners' Provident Society, or to an Arbitrator appointed by the said Board of Management, or to Mr. of , or to his Honour, Judge , County Court Judge, or to an Arbitrator appointed by him (as the case may be).

The said George Smith states as follows :—

1.—*That he claims compensation for injuries received by accident on the 1st July, 1898, whilst in the employment of the said Steam Coal Company, at the Windsor Colliery, Newcastle.*

2.—*That the claim is proposed to be supported by the evidence of the following witnesses (give names and addresses), and by the production of the following books and documents (give list).*

Signed,

Date,

The said Steam Coal Company states as follows :—

1.—*That it disputes the claim of the said George Smith, on the following grounds :—*
(State grounds of objection).

2.—*That the case of the said Company is proposed to be supported by the evidence of the following witnesses (give name, &c.), and by the production of the following books and documents (give list).*

Signed on behalf of the said Company.

Name,

Date,

No. 7.—SUGGESTED FORM OF NOTICE TO THE PARTIES BY THE ARBITRATOR.

WORKMEN'S COMPENSATION ACT, 1897.

Dispute between the STEAM COAL COMPANY, of ,

and

Mr. GEORGE SMITH, of .

To the Steam Coal Company (or Mr. George Smith).

Take notice that I shall proceed to hear and determine the matter in dispute which has been referred to me pursuant to the above Act, on the day of next (or instant), at o'clock, at And that I shall require the attendance there and then of all the parties concerned, and of the witnesses named and the production of the books and documents specified in the statement made by you in the reference of the dispute.

Signed, , *Arbitrator.*
Address,
Date,

No 8.—FORM OF OATH. (*See note (e) page* 31.)

The following is suggested as a form of oath in arbitration proceedings:—

"*The evidence you shall give to this Court of Arbitration shall be the truth, the whole truth, and nothing but the truth. So help you God.*"

No. 9.—FORM OF SCOTCH OATH. (Testament unnecessary).

The person swearing stands, holds up his right hand, and says, "*I swear by Almighty God, as I shall answer to God at the Great Day of Judgment, that I will tell the truth, the whole truth, and nothing but the truth.*"

(This form may be used in any part of the United Kingdom.)

STAMP DUTIES.

Agreements, receipts, bonds, drafts, awards, &c., are subject to the usual stamp duties, there being no exemptions as under Sect. 33 of the Friendly Societies Act, 1896, except in cases where a scheme approved by the Registrar has been registered as a Friendly Society.

Every receipt given for, or upon the payment of, money amounting to £2 or upwards, should bear a penny stamp.

Every *agreement*, under hand only, to take or give any sum of the value of £5 or upwards as compensation, is subject to a stamp duty of sixpence; if under seal, ten shillings.

Every award in England or Ireland, and every award or Decreet Arbitral in Scotland, is subject to the following stamp duty:—

In any case in which an amount or value is the matter in dispute:

	s.	d
Where no amount is awarded, or the amount or value awarded does not exceed £5	0	3
Where the amount exceeds £5, and does not exceed £10 ...	0	6
„ „ £10 „ £20 ...	1	0
„ „ £20 „ £30 ...	1	6
„ „ £30 „ £40 ...	2	0
„ „ £40 „ £50 ...	2	6
„ „ £50 „ £100 ...	5	0
„ „ £100 „ £200 ...	10	0
„ „ £200 „ £500 ...	15	0

(Stamp Act, 1891).

CONTRACTING OUT.

Form of Application for the Registrar's Certificate.

The following important communication appeared in *The Times* of November 29th, 1897:—

Sir,—So many inquiries have been made to this office as to the procedure under the contracting-out section of the Workmen's Compensation Act, 1897, that I am induced to ask you to allow me to publish a brief statement on the matter in your columns. Although the Act does not come into operation until July 1st, 1898, we shall be prepared to receive applications for certificates on and after January 1st next, in order that the necessary preliminaries may be gone through in time to issue the certificates on or before July 1st.

The Act requires as a condition precedent to the granting of a certificate by the Registrar that he should "take steps to ascertain the views of employer and workmen." The first step appears to us to be that the employer and such of the workmen as join in the application should be asked to state their views in writing in a document accompanying the scheme. We have drawn up a form for this purpose, which I subjoin. The second step, that of ascertaining the views of the workmen who do not join in the application, will be taken afterwards.

The investigation that is to follow these preliminary steps, will have, as it appears to us, to be directed to two points:—

1. Will the employer pay as much under the scheme as he would have to pay under the Act?

2. Will the workman derive as much benefit under the scheme as he would derive under the Act?

These questions depend to a large extent upon actuarial considerations; and we therefore suggest to the applicants for certificate to a scheme that they should have recourse to the advice of a competent actuary in framing its details.

I am, sir, your obedient servant,

E. W. Brabrook.

Registry of Friendly Societies, Central Office, 28, Abingdon-street, London, S.W., Nov. 27.

WORKMEN'S COMPENSATION ACT, 1897.

APPLICATION FOR CERTIFICATE TO SCHEME.

Title of Scheme.....

Nature of Employment.....

Situation of Works.....

This application is made by the undersigned employer and .....*workmen.*

The undersigned workmen have been authorized to join in it by .....*out of the total number of* .....*workmen in the employment.* [*State how authority was given. The statement should be authenticated*].

The following is a comparison of the provisions of the scheme with those of the Act :—

	Scale of Compensation.	
	By Act.	By Scheme.
On death of a workman leaving dependents	£150 to £300, subject to the conditions mentioned in the Act.	
On death of a workman leaving no dependents.....	Not exceeding £10.	
During incapacity for work after second week.....	Not exceeding 50 per cent. of earnings, and not exceeding £1 per week.	

The following are the benefits provided by the scheme other than those of the Act :—

The contribution of the employer to the scheme is to be.....

The contribution of the workmen to the scheme is to be.....

The scheme contains no obligation upon the workmen to join the scheme as a condition of their hiring.

The scheme has been actuarily [*valued and*] *reported upon by Mr*..... *and a copy of his report is lodged herewith.*

The views of the employer are as follow :—

(Signature).....*Employer.*

[*Where more than one employer joins in the scheme, the form should be modified accordingly, and all should sign it.*]

The views of the undersigned workmen are as follow :—

(Signatures)

} *Workmen.*

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